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U.S. Charges Still-Secret Portions of Pentagon Papers

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Special to The New York Times

LOS ANGELES, June 22 — The Government charged today that still-secret portions of the Pentagon papers had been leaked to the press.

It said there was a "high likelihood" that the source was the defense in the trial of Dr. Daniel Ellsberg and Anthony J. Russo Jr.

David R. Nissen, special assistant United States Attorney, asked Judge William Matt Byrne Jr. in Federal District Court to hold an inquiry to discover who allegedly violated a court order in leaking the documents.

Mr. Nissen cited seven recent columns by Jack Anderson in The Washington Post that, he said, were based on the last four volumes of the Pentagon papers—the so-called diplomatic volumes that remained classified and unpublished in the press.

Mr. Anderson could not be reached immediately for comment.

His senior associate, Les Whitten, said:

"The columns speak for themselves. The Government knows whether they are from the last four volumes or not."

He added, "Pigs will whistle before we'll tell the Government where they came from."

Attorneys for Dr. Ellsberg and Mr. Russo, who arecharged with stealing the Pentagon papers and converting them to their own use, were given access to the diplomatic volumes to prepare their case.

Judge Byrne issued a protective order under which defense lawyers were required to submit to the court in private the names of any consultants to whom they gave access to the documents. Judge Byrne ordered that these consultants also be served with a protective order that prohibited any leaks to the press.

The diplomatic volumes are mentioned in the 15-count indictment charges the defendants—both former employes of the Rand Corporation, which did research for the Department of Defense — with conspiring to obstruct the Government from controlling its classified documents and violations of the Espionage Act in disclosing documents relating to the national defense.

If convicted of all charges, Dr. Ellsberg could face 115 years in jail and Mr. Russo 35 years.

The Pentagon papers, a massive study of intragovernmental debate over the United States involvement in the Vietnam war, were published by The New York Times and, subsequently, by other newspapers in June, 1971. The indictments of Dr. Ellsberg and Mr. Russo followed.

The last four volumes — officially titled "United States Vietnam Relations, 1945-1967" — deal with attempted peace negotiations. They are subtitled "Histories of Contact Negotiations, 1965-1966," "Histories of Contacts Marigold," "Histories of Contacts Sunflower" and "1967-1968 History of Contacts."

Mr. Nissen said that until this month none of the diplomatic volumes had been "printed in any newspaper or were otherwise disclosed to the public in any manner. All remained classified."

Mr. Nissen said the Anderson colums between June 9 and June 18 disclosed portions of the diplomatic volumes. He said the government had checked its security in the volumes and found it uncompromised. Therefore, he said, circumstances "indicate that this material from the negotiation volumes is being planted for use by the denfese at the trial."

Defense lawyers declined to name the consultants to whom they have passed the diplomatic volumes under the court's protective order.

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But several antiwar activists are reported to be studying the documents for the defense, including Tom Hayden, former officer of the Students for a Democratic Society, and Robert Scheer, a former editor of Ramparts magazine.

The Anderson columns assert that President Nixon brought secret papers to the recent meetings in Moscow with Soviet leaders, papers that told how the Soviet Union had declined to participate in Vietnam negotiations. One column relates how Premier Kosygin, in a conference in London in 1967, had brushed off a British suggestion that the Russians intervene with Hanoi because "China would create difficulties."

Mr. Anderson wrote that secret documents recounted "a halting, but gradual" move toward a negotiated settlement with Hanoi beginning in mid-1964 and a fruitless meeting in July, 1967, with the late Ho Chi Minh of North Vietnam and two French friends of Henry A. Kissinger, now President Nixon's adviser on national security.

The trial of Dr. Ellsberg and Mr. Russo has tentatively been set to begin uly 5 if Judge Byrne can dispose of a number of pending pretrial motions. Arguments on motions began June 5, but the court has been in frequent recess to enable Judge Byrne to study the voluminous brief before him.

The court reconvenes for oral arguments tomorrow.